



366994



"Lerner, Stephen D."
<SLerner@ssd.com>
06/09/2006 06:18 PM

To Alan.Tenenbaum@usdoj.gov, Elise.Feldman@usdoj.gov,
"Smith, Elliot M." <ESmith@ssd.com>,
rsanker@kmklaw.com
cc Jason.Barbeau@usdoj.gov, Catherine
Garypie/R5/USEPA/US@EPA, TKreller@milbank.com,
"Brooks, Patrick J." <PBrooks@ssd.com>, "Craycraft,
bcc

Subject Re: Revised Confirmation Order and Proposed Findings of
Fact and Conclusions of Law

Alan - I am confused and surprised by your email. We've stated repeatedly to you privately and on the record that the Debtors planned to file proposed findings of fact and conclusions and confirmation order and that if a party did not agree with the Debtors' submission such party could file its own findings and conclusions. This process is routine and does not require any court order. Our proposed confirmation order has been on file for almost 2 months without any controversy. Indeed, in recognition of this process, you requested and we agreed to provide the submissions to you in draft form to comment on those provisions that relate to the plan stip.

I don't know why you would have expected the Debtors to file submissions that are not consistent with the theory of their case. In any event, our filing is not intended to interfere with our ongoing discussions on the CTA and settlements. In fact, our submissions contemplate the parties agreement on all issues other than Ohio Funding. Finally, there is nothing in our submissions that is different from our prior legal briefs and the evidence submitted and the Court is not going to determine the disputed issues on the basis of anyone's proposed findings and conclusions.

We look forward to your comments and will be happy to discuss this further at your convenience.

Stephen

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-----Original Message-----

From: Alan.Tenenbaum@usdoj.gov <Alan.Tenenbaum@usdoj.gov>

To: Elise.Feldman@usdoj.gov <Elise.Feldman@usdoj.gov>; Smith, Elliot M. <ESmith@ssd.com>; rsanker@kmlaw.com <rsanker@kmlaw.com>

CC: Jason.Barbeau@usdoj.gov <Jason.Barbeau@usdoj.gov>; Garypie.Catherine@epamail.epa.gov <Garypie.Catherine@epamail.epa.gov>; tkreller@milbank.com <tkreller@milbank.com>; Brooks, Patrick J. <PBrooks@ssd.com>; Craycraft, Kenneth R. <KCraycraft@ssd.com>; Lerner, Stephen D. <SLerner@ssd.com>

Sent: Fri Jun 09 16:13:47 2006

Subject: Re: Revised Confirmation Order and Proposed Findings of Fact and Conclusions of Law

I will be commenting on general language by saturday. We will not be commenting on ohio language. We think it is inappropriate for you to include language relating to the pending matter before the court rules. That is not part of the schedule we agreed on and we would consider your providing what amounts to an extra round of briefing to violate the courts scheduling order. If you want to revise that order you need to seek permission from the court (no ex parte contacts please) and provide an orderly schedule for both sides. Moreover your language would seem to force an appeal and is very unwise if your goal is to end this any time soon. Maybe that isn't your goal?

Sent from my BlackBerry Wireless Handheld

Sent Using U.S. DOJ/ENRD BES Server

-----Original Message-----

From: Feldman, Elise (ENRD) <EFeldman@ENRD.USDOJ.GOV>

To: ESmith@ssd.com <ESmith@ssd.com>; Tenenbaum, Alan (ENRD) <ATenenba@ENRD.USDOJ.GOV>; rsanker@kmlaw.com <rsanker@kmlaw.com>

CC: tkreller@milbank.com <tkreller@milbank.com>; SLerner@ssd.com <SLerner@ssd.com>; KCraycraft@ssd.com <KCraycraft@ssd.com>; PBrooks@ssd.com <PBrooks@ssd.com>; Barbeau, Jason (ENRD) <JBarbeau@ENRD.USDOJ.GOV>; Garypie.Catherine@epamail.epa.gov <Garypie.Catherine@epamail.epa.gov>

Sent: Fri Jun 09 16:14:01 2006

Subject: RE: Revised Confirmation Order and Proposed Findings of Fact and Conclusions of Law

Elliot,

Thanks for the exhibits. Given that we received the FOF/COL and Confirmation Order COB yesterday and we've been working on the CTA most of today (just finished the all-afternoon-call -- and am about to start a call on the KS settlement agreement) we won't be able to give you comments on the FOF/COL by 5. We will do our best to get you comments on or before Monday morning -- or we may, to keep the ball moving -- go ahead and draft up our own set, since it seems unlikely that we'll have an opportunity to discuss proposed changes to your document before you file on Monday. Thanks again.

Elise

-----Original Message-----

From: ESmith@ssd.com [<mailto:ESmith@ssd.com>]

Sent: Friday, June 09, 2006 2:57 PM

To: Tenenbaum, Alan (ENRD); Feldman, Elise (ENRD); ESmith@ssd.com; rsanker@kmklaw.com

Cc: tkreller@milbank.com; SLerner@ssd.com; KCraycraft@ssd.com; PBrooks@ssd.com

Subject: RE: Revised Confirmation Order and Proposed Findings of Fact and Conclusions of Law

<<Exhibit A.DOC>> <<Exhibit B.DOC>>

All:

Attached are Exhibits A and B to the Proposed Confirmation Order.

Reminder: Please provide us with any comments on the Revised Confirmation Order and the Proposed Findings of Fact and Conclusions of Law by 5 p.m. Eastern TODAY. Comments to Exhibits A and B can be provided over the weekend.

Thanks.

>

> From: Smith, Elliot M.

> Sent: Thursday, June 08, 2006 5:17 PM

> To: 'alan.tenenbaum@usdoj.gov'; 'Elise.Feldman@usdoj.gov.';

> 'rsanker@kmklaw.com'

> Cc: 'tkreller@milbank.com'; Lerner, Stephen D.; Craycraft, Kenneth

> R.; Brooks, Patrick J.; Smith, Elliot M.

> Subject: Revised Confirmation Order and Proposed Findings of Fact

> and Conclusions of Law

>

> << File: Proposed Findings of Fact and Conclusions of Law.DOC >> <<

> File Revised Confirmation Order (Redline) (2).DOC >>

> All:

>

> Attached is a revised version of the Proposed Confirmation Order

> (redlined to show changes from the version filed with the Court on

> April 14) and a draft of the Proposed Findings of Fact and Conclusions

> of Law for your review and comment. These drafts remain subject to

> further review, comment and revision by EaglePicher and its advisors.

> We will provide the exhibits to the Proposed Confirmation Order at a

> later date.

>

> We intend to file these documents with the Court as proposed on

> Monday.

>

> As such, please provide us with any comments by 5 p.m. (EST) tomorrow.

> Thank you.

>

>

> Elliot M. Smith

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